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Governor

COMMONWEALTH of VIRGINIA

R. Brian Ball
Secretary of Commerce & Trade

Department of Small Business and Supplier Diversity

Matthew James
Director

Via Electronic Mail

November 19, 2021

Certification Number: 816218

Stephanie Miller
MPS Plastic Wall Products, Inc.
22611 Markey Ct, Suite 109
Sterling, VA 20166

Dear Ms. Miller:

The Department of Small Business and Supplier Diversity (“DSBSD”) is in receipt of your application for certification in the Commonwealth’s Small, Women-owned, and Minority-owned Business (“SWaM”) Program. **We are pleased to inform you that MPS Plastic Wall Products, Inc. has been certified as a Small Business in the SWaM program.** However, after careful review, the DSBSD has determined that MPS Plastic Wall Products, Inc. does not meet the requirements for certification as a Women-owned, Minority-owned business in the SWaM program.

The SWaM application indicates that you are the 51% owner/President of MPS Plastic Wall Products, Inc. David Miller is the 24% owner/Secretary of MPS Plastic Wall Products, Inc. Martin Carlyle is the 25% owner/CEO/Treasurer of MPS Plastic Wall Products, Inc. As the CEO, Martin Carlyle holds the highest executive position. This indicates that you, the woman owner, do not hold the highest executive officer position as required by SWaM regulations concerning a women-owned or minority-owned business.

The Bylaws of MPS Plastic Wall Products, Inc., Article IV, Section 1(a), in pertinent parts, states, “The officers of the Corporation shall consist of a President, a Secretary, a Treasurer, and such numbers of Vice-Presidents, Assistant Secretaries, Assistant Treasurers and Chief Executive Officer as the Board of Directors may from time to time deem advisable.”

As proof of contribution, you submitted an Assignment of Common Stock document, in pertinent parts, states, “This Assignment of Common Stock (“Assignment”) is effective as of January 1, 2020 (“effective date”), by and between David J. Miller (“Assignor”) and Stephanie Miller (“Assignee”).

WHEREAS, Assignor currently owns Seven Hundred Fifty (750) shares of common stock (“Assignor’s Total Shares (the “Shares”); and

WHEREAS, in furtherance of the Corporation's business of continuing to provide interior wall protection systems and related products as a subcontractor and to bid on and perform construction services for certain federal, state and local projects, Assignor desires to transfer and assign the Shares to Assignee and Assignee desires to accept such assignment; and NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as of the Effective Date as follows:

1. The recitals set forth above are incorporated herein as a material part of this Assignment.
2. Assignor hereby assigns and transfers to Assignee, and Assignee hereby accepts from Assignor, all of the Assignor's right, title, and interest in and to the Shares in the Corporation. Further, Assignor shall cause to be cancelled the stock certificate, if any, evidencing the five hundred ten (510) shares of common stock issued by the Corporation to Assignor and caused to be issued a new stock certificate to represent that Assignee now holds of record five hundred ten (510) shares of common stock issued and outstanding common stock of the Corporation. Following the Effective Date, Assignor shall own two hundred forty (240) shares of common stock in the Corporation, which represents 24% of the issued and outstanding stock and Assignee shall own five hundred ten (510) shares of common stock in the Corporation, which represents 51% of the issued and outstanding stock.
3. The assignment of the Shares to Assignee is a transfer of property between spouses, treated as acquired by Assignee by gift, and is not taxable in accordance with Section 1041 of the Internal Revenue Code."

This indicates that you did not make a contribution to acquire majority ownership of the company. Rather, five hundred ten (510) shares of stock was gifted to you. Because the stock was a gift, we are unable to attribute a greater percentage of ownership towards you. Therefore, you have not demonstrated that you, the female, minority owner, own at least 51% of the business as required by SWaM regulations. This is contrary to the Code of Virginia and SWaM regulations concerning a women-owned, minority-owned business, which states:

7VAC13-20-60. Eligible Women-Owned Business.

In general, a business may be certified as a women-owned business if it meets the definition of women-owned business as provided in § 2.2-1604 of the Code of Virginia.

§ 2.2-1604. Definitions.

"Women-owned business" means a business that is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

7VAC13-20-70. Eligible Minority-Owned Business.

In general, a business may be certified as a minority-owned business if it meets the definition of minority-owned business as provided in § 2.2-1604 of the Code of Virginia.

§ 2.2-1604. Definitions.

"Minority-owned business" means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

7VAC13-20-100. Ownership.

- A. The ownership by women, minority, or individual owners (in the case of a small business) must be real, substantial, and continuing going beyond the pro forma ownership of the business.
- B. Records of the applicant's business arrangements must demonstrate that the women, minority, or individual owners who the applicant claims to have ownership interests in the applicant's business share in all risks and profits in proportion to their ownership interests.
- D. Contribution of capital or expertise.
 - 1. Contribution of capital, expertise, or both by women, minority, or individual owners to acquire their ownership interest shall be real and substantial and be in proportion to the interests acquired.
- F. Corporations.
 - 1. In a corporate form of organization, women, minority, or individual owners must own at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding.
 - 2. Any voting agreements among the shareholders must not dilute the beneficial ownership, the rights, or the influence of the women, minority, or individual owners of the stock or classes of stock of the corporation.

3. Women, minority, or individual owners shall possess the right to all customary incidents of ownership (e.g., ability to transfer stock, title possession, enter binding agreements, etc.).

The Bylaws of MPS Plastic Wall Products, Inc., Article III, Section 2, in pertinent parts, states, “The Board of Directors shall be responsible for the control and management of the affairs, property and interests of the Corporation, and may exercise all powers of the Corporation...” Article III, Section 6, states, “At all meetings of the Board of Directors, the presence of a majority of the members of the Board shall be necessary and sufficient to constitute a quorum for the transaction of business...” Article III, Section 7(a), states, “At all meetings of the Board of Directors, each director present shall have one (1) vote, irrespective of the number of shares of stock, if any, which he may hold.” Section 7(b), states, “Except as otherwise provided by statute, by the Articles of Incorporation, or by these By-Laws, the action of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors.”

Your company’s 2021 Annual Report filed with the Virginia State Corporation Commission list you and Martin Carlyle as the only members of the Board. This indicates that without the presence and approval of Martin Carlyle, you are unable to constitute a quorum for the transaction of business or take any action on behalf of the company. Therefore, you do not have the overall control of the business.

Further, your resume does not indicate that you have background or experience in construction services, trade (new construction) which is the specialty area of MPS Plastic Wall Products, Inc. Your resume indicates your experience as business development, physician assistant, and project manager. Without the experience, background, and technical competence in the specialty area of MPS Plastic Wall Products, Inc., you the female, minority owner, is unable to critically evaluate the work of your subordinates. Conversely, David Miller’s resume list his experience as a tradesman, estimator, and project manager.

Furthermore, records on file with the Virginia Department of Profession and Occupational Regulation indicates that MPS Plastic Wall Products, Inc. holds a Class A Contractor’s License with classification in the area of Painting and Wallcovering Contracting (PTC). The Responsible Management is David Miller and John Miller. The Qualified Individual is John Miller. This shows that the experience and expertise of David Miller and John Miller (a non-owner) are indispensable to the business. It further shows that you have not demonstrated that you have the experience and technical competence to qualify for the company’s Contractor’s License. Therefore, without John Miller, MPS Plastic Wall Products, Inc would not hold the proper licensure to legally conduct your company’s specialty service (construction services, trade/new construction). This is contrary to the Code of Virginia and SWaM regulations concerning a women-owned, minority-owned business, which states:

7VAC13-20-60. Eligible Women-Owned Business.

In general, a business may be certified as a women-owned business if it meets the definition of women-owned business as provided in § 2.2-1604 of the Code of Virginia.

§ 2.2-1604. Definitions.

"Women-owned business" means a business that is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

7VAC13-20-70. Eligible Minority-Owned Business.

In general, a business may be certified as a minority-owned business if it meets the definition of minority-owned business as provided in § 2.2-1604 of the Code of Virginia.

§ 2.2-1604. Definitions.

"Minority-owned business" means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

7VAC13-20-110. Control.

The applicant must show evidence that the women, minority, or individual owners have control of the business. The following factors will be examined in determining who controls an applicant's business:

1. Governance.

a. The organizational and governing documents of an applicant (e.g., limited liability company operating agreements, partnership agreements, or articles of incorporation and bylaws) must not contain any provision that restricts the ability of the women, minority, or individual owners from exercising managerial control and operational authority of the business.

b. In reviewing governance documents and issues, special attention shall be given to:

(1) The composition of the business's governing body (e.g., board of directors or management committee);

(2) The functioning of the governing body;

(3) The content of shareholder's agreements, bylaws, or state incorporation statutes, and the extent to which such agreements, bylaws, or statutes affect the ability of the women, minority, or individual owners to direct the management and policy of the business; and

(4) In a business seeking certification as a women-owned or minority-owned business, a woman or a minority owner must hold the highest executive officer position in the company by whatever title.

2. Operation and management.

a. The women, minority, or individual owners must possess the power to direct or cause the direction of the management and policies of the business and to make the day-to-day decisions as well as major decisions on matters of management, policy, and operations. The business must not be subject to any formal or informal restrictions that limit the customary discretion of the women, minority, or individual business owners.

d. The applicants must show evidence that the women, minority, or individual owners have operational authority and managerial control of the applicant.

(1) Operational authority. For purposes of this section, "operational authority" means the extent to which the women, minority, or individual owners actually operate the day-to-day business. Assessments of operational control will rest upon the peculiarities of the industry of which the business is a part. In order to ascertain the level of operational control of the women, minority, or individual owners, the following will be considered:

(a) Experience. The women, minority, or individual owners shall have education, demonstrable working knowledge, or experience in the area of specialty or industry claimed in the certification application.

(c) Technical competence. The women, minority, or individual owners shall have technical competence in the industry or specialty of the applicant business or a working knowledge of the technical requirements of the business sufficient enough to critically evaluate the work of subordinates.

3. Independence.

a. Performance.

(1) The woman, minority, or individual owner's expertise must be indispensable to the business's potential success.

Because of the reasons stated above, we have concluded that you have failed to demonstrate that your company qualifies as a women-owned, minority-owned business. As such, DSBSD cannot certify MPS Plastic Wall Products, Inc. as a women-owned, minority-owned business in the

SWaM Program at this time. This action does not preclude you from conducting business with the Commonwealth of Virginia in the SWaM program and in general.

If you wish to appeal the denial of the Women-owned, Minority-owned designations, you must go to the DSBSD website (www.sbsd.virginia.gov) and download the Request for Informal Hearing form. The form is to be completed and signed by the owner(s) of the firm and submitted within ten (10) business days of receipt of this letter.

Your written notice of appeal should be emailed to appeals@sbsd.virginia.gov. All relevant supporting documentation to support your appeal should be submitted with the appeal form, as a final determination, or the need for you to appear for an informal hearing, is based upon your submitted documentation.

A change that was seemingly made based on, and/or as a result of, being denied certification is not an acceptable reason for an appeal, and in such a case, the appeal may be denied and the decision upheld. New information not previously known at the time of denial, but that is pertinent to the denial, may support your appeal.

Otherwise, if you do not appeal, you may reapply for the Women-owned, Minority-owned status six (6) months from the initial date of denial. SWaM regulations states:

7VAC13-20-220. Reapplication.

- A. A business whose application for certification has been denied may reapply for the same category of certification six months after the date on which the business receives the notice of denial. An applicant denied certification may apply for certification in any other category without delay if otherwise eligible.
- B. The applicant may request a waiver of the six-month reapplication period from the department director by submitting a written request for reconsideration and providing a reasonable basis for the waiver. The director or his designee, in his discretion, shall render a final decision regarding the request for reconsideration and waiver within 30 days, which determination shall not constitute a case decision subject to appeal.

If you wish to request a waiver of the six-month reapplication period, please visit our website at www.sbsd.virginia.gov to complete and submit the "Waiver Request Form." If you have any questions regarding your status, please contact us at (804) 786-6585.

Sincerely,

Virginia Department of Small Business and Supplier Diversity
Certification Team